

**Application No.:** 09/847,759  
**Filing Date:** May 2, 2001

#### **AMENDMENTS TO THE DRAWINGS**

Please replace Figures 1-6 with the Figures 1-6 provided on the enclosed *Replacement Sheets*.

Figure 3 has been amended to illustrate the side rods 37 of the framework 22b extending only a small amount above the panel 30, to remove the illustration of structure below the rod 10a, and to decrease the illustrated length of the fasteners.

Figure 4 has been amended to include a label stating that the drawing is new.

Figure 5 has been amended to illustrate the side rods 37 of the framework 22b extending only a small amount above the panel 26.

Figure 6 has been amended to delete the reference character 10f.

## **REMARKS**

Claims 1-16, 20, 23, 24, 26-35, 56, 57, and 59-61 remain pending in the present Application, Claims 5, 10-14, 20, 56, and 57 are amended (in comparison to the previous Office Action response), and Claim 22 having been canceled herein (in comparison to the previous Office Action response). The changes to the claims set forth above include underlining to show additions and [brackets] to show deletions relative to the issued patent, U.S. Patent No. 6,044,983.

In response to the Final Office Action dated July 7, 2010, Applicant respectfully requests reconsideration of the above-identified application in view of the above amendments and the following comments.

### Objections to the Drawings

The Final Office Action objects to the drawings based on certain informalities. Although Applicant does not concede the merits of these objections, in order to expedite prosecution, Applicant has amended the drawings to comply.

Regarding the objection that Fig. 4 should be labeled as new since the figure was not in the original set of figures, a label has been added to comply.

With regard to the Final Office Action's objections to Figs. 3 and 5 on the grounds that the side rod 37 of the "the frame work 22b extends too far above the panel 30," Applicant submits that the drawings are schematic only, which has been long allowed by the M.P.E.P. Nonetheless, Applicant has amended Figs. 3 and 5 to schematically illustrate the side rod 37 of the framework 22b as extending above the panel 30 or 26 only a small amount.

Regarding the objection to Fig. 3 because of the structure shown below the rod 10a, Applicant submits that at least panels 10e and/or panel 10f provide the illustrated structure. As shown in Fig. 1, a rear portion of at least one of the panels 10e, 10f can wrap around rods 10a and/or 10c. Thus, when viewed in the elevational view of Fig. 3, a portion of the panels 10e, 10f could be seen projecting below rod 10a. Nonetheless, to expedite prosecution, Applicant has amended Fig. 3 to remove the structure illustrated below the rod 10a.

As to the objection to Fig. 3 on the grounds that the fasteners 15 are so long that they would interfere with the dispensing of beverage cans, although the drawings are schematic only, Applicant has amended Fig. 3 to depict shorter fasteners 15.

With regard to the objection to Fig. 3 that it is unclear what structure of the shelf structure the fasteners 15 engage to support the shelf structure, Applicant has amended Fig. 3 to better depict the fasteners 15 engaging the holes 11. The fasteners 15 can connect to the panels 10e, 10f at least by threads in the holes 11. As stated at col. 2, lines 56-64 of the Specification “the panels 10e, 10f could have holes (not shown) for threaded fasteners to a cooler shelf.” Applicant submits that the schematic representation of Figure 3 is generic to threaded fasteners that cooperate with threads on the plate or additional threaded nuts.

Regarding the objection to Fig. 6 for the reason that reference character “10f” has no lead line, this reference character has been removed from Fig. 6. Accordingly, this objection is moot.

*The Specification Amendments Fully Comply With 35 U.S.C. § 132(a)*

The Amendments filed March 1, 2004, October 6, 2008, and August 18, 2009 stand objected to under U.S.C. § 132(a) because they allegedly introduce new matter into the disclosure. Applicant respectfully traverses the present objections for at least the reason that one of ordinary skill in the art would recognize that all the changes made to the Specification through the course of the present Reissue Application were merely formalistic in nature and are fully supported by the original Specification as originally filed.

*Rejection as to Figure 3*

With regard to the rejection that the threaded fasteners 15 extending through the panels 10e and 10f, as shown in Figure 3, constitute new matter on the grounds that the specification does not support the holes themselves being threaded, Applicant traverses. The same rejection was asserted in the Office Action transmitted on September 21, 2009, which Applicant’s Response filed March 22, 2010 traversed and provided arguments showing that Figure 3 did not introduce new matter.

“Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant’s argument *and answer the substance of it.*” M.P.E.P. § 707.07(f) (emphasis added). Here, the Final Office Action repeats rejection from the September

21, 2009 Office Action but provides no reasoning for maintaining this rejection—aside from the boilerplate assertion that “Applicant’s arguments filed March 22, 2010 have been fully considered but they are not persuasive.” Final Office Action at p. 17. No substantive answer has been provided, as the M.P.E.P. requires. Accordingly, Applicant requests respectfully reconsideration of, and resubmits below, the arguments regarding this rejection from the Response filed March 22, 2010.

Applicant respectfully directs the Examiner to Col. 2, lines 56-64 of the Specification, which state:

However, in view of the framework at 22b described below, it would be equivalent in another embodiment (not shown) to have the shelf at 16 fastened under the other structure to hang the framework under the other structure, the shelf at 16 in such an arrangement also being considered herein as superimposed relative to the other structure. For example, the panels 10e, 10f could have holes (not shown) for threaded fasteners to a cooler shelf.

Further, Applicant submits that no threads at all are shown in any of the drawings. Instead, the threaded fasteners are represented schematically.

Thus, Applicant submits that there is no basis whatsoever for any new matter rejection. Instead, it appears that the Final Office Action’s position is that figure 3 adds new matter by *inherency*.

Nothing in the MPEP provides for a new matter rejection based on the addition of new matter by inherency. Further, even if there were such a rule, Applicant submits that the schematic drawing of Figure 3 does not necessarily disclose threaded holes in the plates. Rather, the schematic representation of Figure 3 is *generic* to threaded fasteners that cooperate with threads on the plate or additional *threaded nuts*, neither of which are disclosed **or claimed** in the present application.

Applicant thus submits that no new matter has been introduced by Figure 3. Thus, Applicant respectfully requests the current rejection be withdrawn.

#### Rejection as to Figure 6

With regard to the rejection that the spacing between the rear edge of the shelf and the rear of the frame work 26, as shown in Figure 6, constitutes new matter, Applicant respectfully traverses.



now being asserted at this late stage—in the Final Office Action—such a rejection constitutes piecemeal examination in contravention of the M.P.E.P.

Further, Applicant wishes to again remind the Examiner that during one of the past interviews, the *Examiner himself requested this drawing* to be added to the application, against the Applicant's counsel's apprehension that such a drawing would raise the probability of a new matter rejection.

In spite of the above, in order to further prosecution Applicant responds to this rejection by submitting that that Figure 6 does not add new matter for at least the following reason. As discussed in additional detail below, the Specification teaches that embodiments of the shelf structure can be hung from a shelf and that embodiments of the shelf structure can be loaded from the rear. *See, e.g.*, col. 2, line 59; col. 4, line 61. Consequently, one of skill in the art would understand that, in order to facilitate such loading, the rear of the shelf structure may need to be spaced a distance from the rear edge of the shelf. This combination of features requires no special skill and is within the teaching of the Specification. Applicant thus requests that this rejection be withdrawn.

#### Rejection as to Claims 20, 30, and 33 Regarding Rear Loading

With regard to the rejection of Claims 20, 30, and 33 on the basis that the recitation “a spacing defined between the upper ends of the second pair of support legs and the rearward portion of the support assembly sized so as to allow beverage containers to be inserted between a rear portion of the shelf and the rearward portion of the support assembly” lacks support in the Specification, Applicant respectfully traverses.

The Final Office Action concedes that the Specification contains support for loading cans at the rear. *See* Final Office Action at p. 5; *see also* col. 2, line 51; col. 4, line 61. Even if those portions of the Specification regarding rear loading were directed toward a non-hanging embodiment of the shelf, “it would be equivalent in another embodiment (not shown) to have the shelf at 16 fastened under the other structure to hang the framework under the other structure.” Specification at Col. 2, lines 57-60. Thus, given that the Specification supports a non-hanging shelf with the rear loading of cans, and a hanging shelf is supported as an equivalent of the non-hanging shelf, a hanging shelf with the rear loading of cans is supported as well.

As to the Final Office Action's assertion that a hanging shelf that can be loaded from the rear constitutes "picking and choosing the features of two separate embodiments," in addition to at least the support discussed above, Applicant submits that the Specification expressly contemplates combinations of features of embodiments. "Various combinations or permutations as would occur to those skilled in the art are equivalent element-by-element to the described preferred embodiments." Specification at Col. 4, lines 33-35. Given that it would occur to one of skill in the art that loading cans at the rear of a hanging rack could be advantageous, the combination of such features (i.e. hanging rack and rear loading) is exactly what the Specification describes. Accordingly, combining the non-hanging shelf's rear loading feature into the hanging shelf is fully supported and does not constitute new matter.

Rejection as to Claims 20 and 30 Regarding Leg Length When the Rack is Hanging

As to the rejection of Claims 20 and 30 on the basis that the recitation "wherein the first and second pairs of support legs are sized such that beverage containers can fit between the beverage support surface and the second crossmember and such that the forward portion hangs lower than the rearward portion when the rack is hanging, by the first and second crossmembers, from said shelf above the rack" is not supported by the Specification, Applicant respectfully traverses.

The Final Office Action bases this rejection on the grounds that the Specification does not provide support for "the legs having different lengths when the rack is mounted to the underside of a shelf." Final Office Action at p. 5. Applicant respectfully submits that this is an unreasonably narrow interpretation of the Specification. The Specification supports the shelf being hung and supports the shelf having legs of different lengths. *See* col. 2, lines 56-64 (stating that rack may be hung); col. 3, lines 2-6 (stating that the legs may have unequal lengths). Taken together, these portions of the Specification thus support that the legs may have different lengths when the rack is hung, which is precisely what is recited in Claims 20 and 30.

Further, even if those portions of the Specification that discuss legs of different lengths were directed toward a non-hanging embodiment of the rack, the Specification makes clear that a hanging embodiment would be equivalent. "It would be equivalent in another embodiment (not shown) to have the shelf at 16 fastened under the other structure to hang the framework under the other structure." Specification at Col. 2, lines 57-60. As the equivalent—hanging—rack can

include the features of the non-hanging embodiment, such as legs of different lengths, the Specification fully supports the legs of different lengths when the rack is mounted to the underside of a shelf.

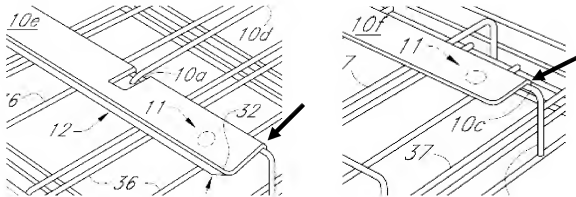
Moreover, contrary to the Final Office Action's assertion that the Applicant is "picking and choosing the features of two separate embodiments," the Specification expressly contemplates combinations of features of embodiments. Final Office Action at p. 6. "Various combinations or permutations as would occur to those skilled in the art are equivalent element-by-element to the described preferred embodiments." Specification at Col. 4, lines 33-35. One skilled in the art would recognize that the legs of different lengths of one embodiment could be combined with the hanging shelf of another embodiment. Accordingly, a hanging shelf with legs of different lengths is not new matter and this rejection is moot.

*The Claims Fully Comply With 35 U.S.C. § 112*

In the Final Office Action, Claims 1-16, 20, 22-24, 26-29, 33, 34 and 59-61 stand rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite. Applicant respectfully traverses each of the present rejections for at least the reasons below.

In Response to the rejection of Claim 1 alleging that the recitation "the front rod member . . . defining a first plane" on lines 11-13 of Claim 1, Applicant respectfully traverses. This rejection is based on the stated ground that "it is not clear that the panel member 10e curves downward about the rod members enough to define the applicant's claimed plane." Final Office Action at p. 6. Applicant respectfully disagrees and submits that at least Figure 1 shows panel member 10e curving downward about the rod members. For convenience, excerpts of Figure 1 showing the curve of the panels 10e, 10f are reproduced below:





As shown above, Figure 1 illustrates that the first panel member 10e and second panel member 10f curve downward about rod members 10a and 10c, thereby “defining a first plane” with the front rod member 10a and the at least one other rod member 10b, 10c. Accordingly, Applicant respectfully submits that the claim is not indefinite and requests withdrawal of this rejection.

With regard to the rejection of Claim 10 alleging that the recitation of “whereby to carry indicia” on line 2 of Claim 10 is unclear regarding what element the Applicant is referring to, without addressing the merits of the rejection, to expedite prosecution Applicant has amended Claim 10, as well as Claims 11-13, to recite “whereby the front panel is configured to carry indicia.” Thus, Applicant respectfully submits that the element carrying the indicia is clear and definite. Applicant respectfully submits that this rejection is moot.

With regard to the rejection of Claim 14 alleging that the recitation of “a portion of the framework (22b) extends at least forward of the front rod member (10a) thereon with a stop” is unclear as to what the Applicant is attempting to set forth, specifically what element of the invention has the element thereon, Applicant respectfully traverses. Final Office Action at p. 6-7. At the outset, it should be noted that the rejected claim element was not rejected in the previous Office Action (transmitted on September 21, 2009) nor was it amended in Applicant’s Response filed March 22, 2010. Given that the Final Office Action makes this rejection for the first time, the present rejection thus constitutes piecemeal examination in contravention of M.P.E.P. 707.07(g). Nonetheless, in order to expedite prosecution, Applicant has amended Claim 14, as well as Claim 5, to recite “wherein at least a portion of the framework (22b) extends at least forward of the front rod member (10a), said portion of the framework (22b) including a stop.”

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Thus, Applicant submits that element including the stop is clear and definite. Applicant respectfully submits that this rejection is moot.

Regarding the rejection of Claim 20 on the grounds that “the shelf” on line 25 allegedly lacks antecedent basis, Applicant has amended line 1 of this claim to recite “A rack hanging from a shelf,” thus providing antecedent basis for the recitation of “the shelf” on line 25. Thus, Applicant respectfully submits that this rejection is moot.

As to the rejection of Claim 22 on the grounds that “a stop” on line 1 allegedly renders the claim indefinite because “it is unclear whether or not the applicant is referring to the stop set forth above,” Applicant has cancelled this claim without prejudice. Thus, this rejection is moot.

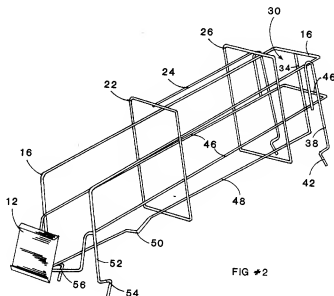
With regard to the rejection of Claim 57 on the grounds that “a shelf” on line 20 allegedly renders the claim indefinite because “it is unclear whether or not the applicant is referring to the structure set forth above,” Applicant has amended this claim to recite “a structure.” Support for this amendment is found at least at col. 2, lines 54-64 of the Specification.

In light of at least the reasons set forth above, Applicant respectfully submits that Claims 1-16, 20, 22-24, 26-29, 33, 34 and 59-61 fully comply with 35 U.S.C. § 112. Accordingly, Applicant request that the current rejections be withdrawn.

*The Claims Fully Comply With 35 U.S.C. § 102(b)*

Claim 20 is Not Anticipated by Lockwood

In the Final Office Action, Claim 20 stands rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent No. 4,732,282 issued to Lockwood (hereinafter "Lockwood"). Lockwood discloses a mechanism for dispensing merchandise items comprising a bottom support rail 48, upper and lower support rails 16, 46, support yokes 22, 26, and feet 42, 54 disposed at the bottom of the rack and configured to fit into receiver holes on a shelf. See Lockwood, Figure 2 (reproduced below); col. 3, lines 1-9, 18-26, 47-51.



Applicant previously argued that Lockwood does not anticipate Claim 20 at least because Lockwood fails to disclose a rack that hangs from a shelf above the rack, that the Lockwood rack would not hang in the shape as claimed even if the Lockwood rack was hung by the top portions of members 22 and 26, and that the shape as claimed is not inherent in Lockwood. In response, the Final Office Action contends:

Regarding the applicant's comments concerning Lockwood, the examiner respectfully disagrees. It should first be noted that claim 20 does not require the rack to hang from a shelf. Rather, claim 20 only requires that "the first and second pairs of support legs are sized such that . . . the forward portion hangs lower than the rearward portion when the rack is hanging, by the first and second crossmembers, from said shelf above the rack." Lockwood clearly meets the limitations of claim 20 since the rack is clearly capable of being fixed to the underside of a tilted shelf via the first and second cross members. Since the shelf is tilted, the forward portion would hang lower than the rearward portion so that the product disposed on the rack can be easily dispensed.

Final Office Action at p. 17 (emphasis added).

The Final Office Action wholly fails to respond to the Applicant's argument that the Lockwood rack would not hang in the claimed shape even if the Lockwood rack was hung by the top portions of members 22 and 26. The Final Office Action further fails to respond to the Applicant's argument and that the disclosed shape as claimed is not inherent in Lockwood.

As to the Final Office Action's allegation that "Lockwood clearly meets the limitation of claim 20 since the rack is clearly capable of being fixed to the underside of a tilted shelf via the first and second cross members," the Final Office Action identifies no portion of Lockwood that actually discloses such a tilted shelf, much less the ability of the Lockwood rack to be mounted to such a shelf. Rather, the Final Office Action appears to import these elements into the Lockwood reference in order to render a rejection under 35 U.S.C. § 102(b). This is incorrect. "[A]nticipation requires that each limitation of a claim must be found in a single reference. *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1335 (Fed. Cir 2002).

Regarding the Final Office Action's assertion that Claim 20 does not require that the rack hang from a shelf, the Final Office Action itself concedes that Claim 1 recites "when the rack is hanging . . . from said shelf." Nonetheless, although Applicant believes that Claim 20 as written is patentably distinct from Lockwood, to expedite prosecution Applicant has amended line 1 of Claim 20 to recite "A rack hanging from a shelf." Thus, Applicant submits that, unlike the Lockwood rack that is supported by *feet*, Claim 20 recites a *hanging rack*. Accordingly, Applicant respectfully submits that the present rejection is moot.

Therefore, for at least the reasons discussed above, Applicant respectfully requests that the rejection of Claim 20 be withdrawn and that this claim be indicated as allowable.

Dependant Claims 22, 23, 26, and 29 are Not Anticipated By Lockwood

In the Office Action, Claims 22, 23, 26, and 29 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lockwood. Applicant respectfully traverses this rejection and submits that Claims 22, 23, 26, and 29 should be allowable based on their own merit and for at least the reason that these claims depend from an allowable independent base claim, Claim 20. Accordingly, Applicant respectfully requests that the rejection of Claim 22, 23, 26, and 29 be withdrawn and that these claims be indicated as allowable.

The Claims Fully Comply With 35 U.S.C. § 103(a)

Claim 1 is Not Rendered Obvious by the Proposed Combination of Jepson Claim 1, Hickman, and Olson

In the Final Office Action, Claim 1 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over the preamble of Jepson Claim 1 in view of U.S. Patent No. 5,123,545 issued to Hickman (hereinafter "Hickman") and U.S. Patent No. 4,426,008 issued Olson *et al.* (hereinafter "Olson"). Applicant respectfully traverses the present rejection.

Hickman discloses a stackable storage and dispensing rack for computer tapes. As shown in Figures 4 and 6 of Hickman (reproduced below), the rack includes side frame elements 62 having upper and lower sections 64, 66, intermediate elements 72, front and rear sections 68, 70, and upper and lower stringer members 98, 100. The rack is mounted to an inclined shelf, thus permitting gravity to feed the computer tapes toward the front of the rack.

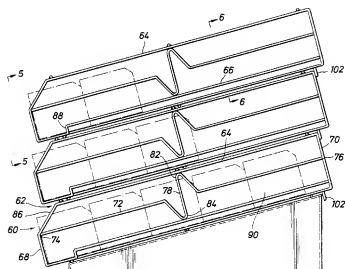


Fig. 4 of Hickman

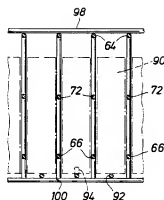


Fig. 6 of Hickman  
(Along the section 6-6 of Fig. 4)

Olson discloses a stackable rack for canned goods. As shown in Figures 1 and 2 of Olson (reproduced below), the rack includes upper and lower track assemblies A, B, which are each divided into a plurality of upper and lower tracks (e.g., 14A, 14B), into which the canned goods are fed. Vertical supports 10, 12 space apart the upper and lower track assemblies and terminate in a support elements 22, which in turn connect to support plates 26. The lower support plate 26 of an upper rack coordinates with the upper support 26 plate of a lower rack to enable the two racks to be stacked and securely fastened together with bolts 28. The lower support plate 26 can also be mounted to a counter with a bolt 28 and washer 35. See Olson at col. 3, lines 12-35.

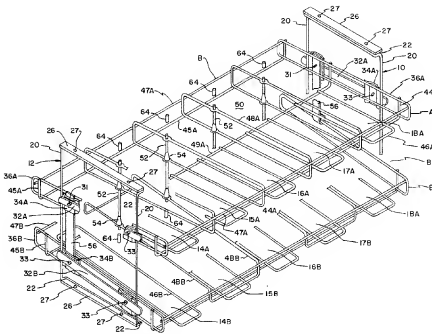


Fig. 1 of Olson

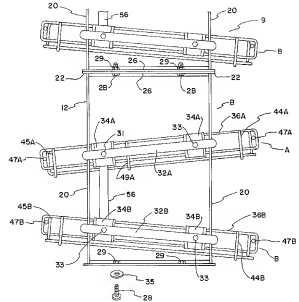


Fig. 2 of Olson

In contrast, amended Claim 1 recites, *inter alia*:

a front rodmember (10a), at least one other rod member (10b, 10c) rearwardly spaced from the front rod member (10a) at least a first panel member (10e) extending along at least a majority of the front rod member and a second panel member (10f) extending along the at least one other rod member (10b, 10c)

Claim 1 further recites, *inter alia*:

the front rod member, the at least one other rod member, the first panel member, and the second panel member defining a first plane (16) and being configured to support additional shelving above the first plane, the first and second panel members also being configured to support the shelf structure from one of said fixed or adjustable shelves with the shelf structure disposed below said one of said fixed or adjustable shelves;

Hickman fails to teach or suggest at least a “first panel member (10e) extending along at least a majority of the front rod member” and a “second panel member (10f) extending along the at least one other rod member (10b, 10c),” as recited in amended Claim 1.

Olson does not remedy Hickman’s deficiency. The Final Office Action contends that Olson’s support plate 26 corresponds to the first and second panel members recited in Claim 1.

See Final Office Action at p. 11. However, as shown in Figure 1 of Olson (reproduced above), Olson's support plates 26 mount to support elements 22 that run parallel to the front-to-back axis of the rack. The support elements 22 are about even with each other relative to the front of rack, *i.e.*, Olson does not have a front support element and rear support element. Accordingly, Olson does not have a "**first panel member** (10e) extending along at least a majority of the **front rod member**" and a "**second panel member** (10f) extending along the at least one **other rod member** (10b, 10c)," where the "other rod member (10b, 10c) [is] **rearwardly spaced** from the front rod member," as recited in Claim 1.

Additionally, Hickman fails to teach or suggest at least that the panel members be "**configured** to support additional shelving above the first plane, the first and second panel members **also being configured** to support the shelf structure from one of said fixed or adjustable shelves with the shelf structure disposed below said one of said fixed or adjustable shelves," as recited in Claim 1. Indeed, the Final Office Action does not establish any indication in Hickman that would teach or suggest that the rack could be hung, much less any teaching or suggestion concerning a rack having Claim 1's double configuration, *i.e.*, a structure that is configured to mount additional shelving above **and** configured to be supported below a shelf.

Olson again fails to remedy Hickman's deficiency. Olson teaches a stackable rack and a rack that can be coupled to a countertop via the lower support plate 26 (See Fig. 2 of Olson above). But the Final Office Action does not establish any teaching or suggestion in Olson regarding hanging the rack.

Accordingly, for at least the above reasons, Hickman and Olson fail to teach or suggest each and every element of Claim 1. Thus, a *prima facie* case of obviousness has not been maintained. Applicant therefore respectfully requests that the current rejection be withdrawn.

Furthermore, one of skill in the art would not look to the rack of Hickman in seeking to design the shelf structure recited in Claim 1 for at least the reason that such a modification would render Hickman unsatisfactory for its intended purpose. "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)." M.P.E.P. § 2143.01 V. Here, Hickman discloses a rack for the storage of computer tapes.



**It is a principal feature of the present invention to provide a stackable storage rack for computer tape cassettes and other similar articles which permits dense and accessible storage of computer tape cassettes.**

Hickman at col. 1, lines 62-65. Hickman describes the environment for computer tapes as follows:

**repeatedly in further computer related activities. Historically, computer data has been stored on large storage reels that are typically packaged in large circular containers. These containers of computer tape must be stored in such manner that they are maintained in a clean, temperature controlled environment and stored in such manner that operating personnel will have ready and efficient access to them. Typically, computer tape**

Hickman at col. 1, lines 29-36.

In contrast, Claim 1 recites a shelf used “In one of a cooler, visi-cooler, walk-in cooler and glass-door cooler having fixed or adjustable shelves.” By their nature, such coolers are generally humid and vary in temperature, *e.g.*, when the cooler door is repetitively opened and closed. Thus, the environment of such coolers would be contrary to Hickman’s directive that the tapes—and thus the rack holding the tapes—**“must be stored in a clean, temperature controlled environment”** (emphasis added). Accordingly, to modify the rack of Hickman such that it is used in the environment recited in Claim 1 would not only be against the express teaching of Hickman, but would also render Hickman unsatisfactory for its intended purpose.

M.P.E.P. § 2141.02 IV states: “A prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).” Thus, for at least the above reasons, Appellants disagree with the Final Office Action’s asserted application of Hickman’s rack in “a cooler, visi-cooler, walk-in cooler and glass-door cooler having fixed or adjustable shelves,” as stated in Claim 1. In fact, Hickman contradicts this assertion for at least the reasons outlined above. Such a modification would “frustrate the purpose” of Hickman as well. Accordingly, Applicant respectfully requests that current rejection be withdrawn.



Claim 57 is Not Rendered Obvious by the Proposed Combination of Dickson and Lockwood

In the Final Office Action, Claim 57 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Dickson in view of Lockwood. Applicant respectfully traverses.

Applicant previously argued that the Dickson fastener 30 does not support the rack. Rather, a pair of C-shaped brackets 22 support the rack; the fastener 30 is provided merely for adjusting the angle of the rack. Accordingly, Dickson fails to teach or suggest a fastener “for supporting the rearward portion of the support assembly,” as recited in Claim 57.

In response to Applicant’s arguments, the Final Office Action asserts that “Claim 57 does not require the fasteners to support the support assembly.” Final Office Action at p. 18. This is incorrect. Claim 57 recites “*fasteners for supporting* the rearward portion of the support assembly from the structure above the support assembly” (emphasis added). Thus, as stated in Claim 57, the fasteners “support[]” a rearward portion of the support assembly.

The Final Office Action further asserts that “Claim 57 does not even require fasteners.” Final Office Action at p. 18. Without addressing the merits of the Final Office Action’s assertion, to expedite prosecution, Applicants have amended line 1 of Claim 57 to recite: “A shelf *fastened under a structure by fasteners*, the shelf comprising.” (emphasis added). Support for this amendment is found at least at col. 2, lines 56-64 of the Specification. Accordingly, Applicant submits that the fasteners themselves are part of Claim 57.

Additionally, the Final Office Action contends that “Claim 57 only requires apertures which are capable of receiving fasteners and those fasteners are capable of supporting the support assembly. Clearly the apertures of Dickson can receive fasteners which can support the support assembly.” Final Office Action at p. 18. However, contrary to the Final Office Action’s assertion, the fasteners of Claim 57 are not merely “capable” of supporting the support assembly, but in fact *are* supporting the support assembly. Whether the apertures of Dickson *can* receive fasteners that can support the support assembly is irrelevant. Claim 57 recites that the fasteners *are* “supporting” the support assembly.

Dickson does not teach or suggest fasteners that are supporting rack. Dickson teaches hanging a rack from shelf by a C-shaped bracket 22. Thumb screw 27 provides compression on the shelf 26 opposite the C-shaped bracket 22, while rear thumb screw 30 adjusts the position of

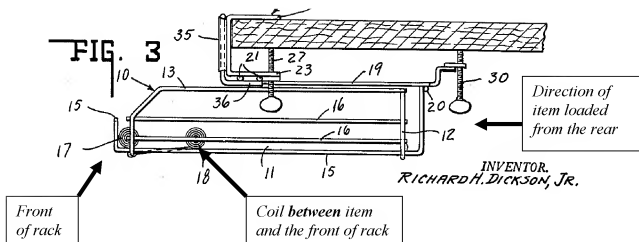
the rear of the rack relative to the shelf. *See* Dickson at col. 2, line 20-46. Even if the thumb screws 27, 30 were removed, the rack would remain suspended under the shelf. Accordingly, the thumb screws 27, 30 are not supporting the rack. Accordingly, Dickson fails to teach or suggest a “shelf fastened under a structure by fasteners” including “first and second apertures being configured to receive fasteners supporting the forward portion of the support assembly from the structure above the support assembly” and “third and fourth apertures being configured to receive fasteners supporting the rearward portion of the support assembly from the structure above the support assembly,” as recited in Claim 57.

Applicant also previously argued that Dickson device does not render obvious a rack in which items “can be placed onto the rearward portion of the support assembly when the third aperture is connected to a shelf disposed above the support assembly by fasteners,” as recited in Claim 57. In response, the Final Office Action asserts that “the coils 17 of Dickson do not affect the spacing taught by Dickson.” Final Office Action at p. 19. The Examiner appears to have misunderstood the Applicant’s argument. Applicant submits that the proposed modification would render Dickson unsuitable for its intended purpose.

One of Dickson’s stated purposes is:

**Still another object of the present invention is to provide a display and feeding device incorporating means for feeding the merchandise forwardly to an easily seen and accessible position.**

Dickson at col. 1, lines 29-32 (emphasis added). To facilitate achieving this goal, Dickson employs resilient coils 18 in the channels of the rack. Dickson teaches that the merchandise is “received *in front of the coiled portion* 18 of the coil” so that “merchandise or other objects received in the channels 14 will always be retained at the forward end of the container where they are visible to the customer and are easily accessible.” Dickson at col. 2, lines 2-10 (emphasis added). The configuration of the Dickson rack is such that, if an item was loaded into the rear of the rack, the coil would be *between* the item and the front of the rack. Such a scenario is illustrated in Figure 3 of Dickson below:



As shown, rear loading of the Dickson rack would put the coil 18 between the merchandise and the front of the rack. This arrangement would impede merchandise from being displayed at the front of the rack, which in turn would limit customer's ability to see and access such merchandise. Such an arrangement would be contrary to Dickson's stated purpose that merchandise "will *always* be retained at the *forward end* of the container where they are *visible* to the customer and are easily *accessible*." Dickson at col. 2, lines 2-10 (emphasis added).

“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” M.P.E.P. § 2143.01 V (citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)). Accordingly, in light of at least the reasons above, there is no suggestion or motivation to modify Dickson “such that cylindrical beverage containers can be placed onto the rearward portion of the support assembly when the third and fourth apertures are connected to a shelf disposed above the support assembly by fasteners,” as recited in Claim 57. Accordingly, Applicant respectfully requests that current rejection be withdrawn.

Dependant Claims 2-8, 9-13, 24, 27, 28, and 59-61 are Not Rendered Obvious by the Cited Art

In the Final Office Action, Claims 2-8 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over the preamble of Jepson Claim 1 in view of Hickman and Olson; Claims 9-13 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over the preamble of Jepson Claim 1 in view of Hickman and Olson and further in view of Lockwood; Claims 24 and 29 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over

Lockwood in view of Dickson; Claim 27 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Lockwood; Claim 59 and 61 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Dickson in view of Lockwood; and Claim 60 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Dickson in view of Lockwood and further in view of Olson. Applicant respectfully traverses each of these rejections.

Applicant submits that Claims 2-8 and 9-13 should be allowable based on their own merit and for at least the reason that these claims depend from an allowable independent base claim, Claim 1. Applicant submits that Claims 24, 27, and 29 should be allowable based on their own merit and for at least the reason that these claims depend from an allowable independent base claim, Claim 20. Applicant submits that Claims 59-61 should be allowable based on their own merit and for at least the reason that these claims depend from an allowable independent base claim, Claim 57.

Accordingly, Applicant respectfully requests that the rejection of Claim 2-8, 9-13, 24, 27, 28, and 59-61 be withdrawn and that these claims be indicated as allowable.

#### Allowable Claims

Applicant thanks the Examiner for indicating the Final Office Action that Claims 30-32 and 35 are allowable.

The Final Office Action further indicates that Claims 14-16, 33, and 34 are allowable if rewritten or amended to overcome the rejections under 35 U.S.C. § 112, 2nd paragraph. In light of the above amendments and remarks regarding Claim 14 (from which Claims 15 and 16 depend) and Claim 33 (from which Claim 34 depends), Applicant respectfully submits that the present rejections have been overcome and, thus, Claims 14-16, 33, and 34 are in condition for allowance.

#### No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other

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**Filing Date:** May 2, 2001

broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: November 8, 2010

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